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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/971,799	10/03/2001	Karl Andrew Garrill	PG4113US2	3583

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DAVID J LEVY, CORPORATE INTELLECTUAL PROPERTY  
GLAXOSMITHKLINE  
FIVE MOORE DR., PO BOX 13398  
RESEARCH TRIANGLE PARK, NC 27709-3398

EXAMINER

FOSTER, JIMMY G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 10/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/971,799

Applicant(s)

GARRILL ET AL

Examiner

Jimmy G Foster

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-55, 57-71, 81-105, 109-113 and 116-125 is/are pending in the application.

4a) Of the above claim(s) 117-123 is/are withdrawn from consideration.

- 5) ☒ Claim(s) 1-24, 26-55, 57-71, 81-104 and 125 is/are allowed.

- 6) ☒ Claim(s) 25, 105, 109-113, 116 and 124 is/are rejected.

- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8 6) ☐ Other: \_\_\_\_\_

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1. Claims 56, 72-80, 106-108, 114 and 115 have been cancelled from amendment by Applicant.

2. Claims 117-123 are withdrawn from further consideration as being directed to species non-elected without traverse in paper 5.

3. Claims 1-24, 26-55, 57-71, 81-104 and 125 are allowable.

4. Claim 25 is rejected under 35 U.S.C. §101 as being a substantial duplicate of claim 19. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to reject the other as being a substantial duplicate of the allowed claim.

MPEP § 706.03(k).

5. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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6. Claims 105 and 113 are finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Alband (5,775,321) in view of published International Application 96/26755 to Marr. Applicant's amendment intentionally broadens claim 105 so that it no longer includes a requirement that the enclosing means be moisture impermeable but merely enclosing. However the term "enclosing" is broad enough to be defined as "surrounding."

The device of Alband constitutes a canister/can (see for example the title) which may be made out of metal, such as steel (see col. 2, lines 31-36). The canister is intended to hold a medicinal aerosol formulation/pressurized drug formulation which includes a hydrofluoroalkane (1,1,1,2-tetrafluoroethane (HFA 134a)). See for example column 7, lines 21-34.

The reference of Alband further discloses that such a canister is used in metered dose device (see col. 7, lines 5-7).

Although the reference of Alband does not disclose a flexible means for enclosing the can of Alband, the reference of Marr, at pages 2 and 5, suggests that a cover may be provided around a metered dose device/inhaler (MDI) for the purpose of disguising the inhaler to reduce embarrassment from the use thereof. As indicated by the reference, the cover may suitably constitute a sleeve (3) of plastic, rubber or synthetic rubber (see page 3, lines 1-4). Therefore the cover will surround/enclose the MDI and will be flexible. Accordingly, it

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would have been obvious in view of Marr to have provided a flexible cover/sleeve surrounding/enclosing the metered dose device of Alband, which includes a pressurized drug formulation including a drug and a propellant, for the purpose of disguising device for use without embarrassment.

7. Claims 109-112 are finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Alband in view of Marr as applied to claim 105 above, and further in view of Plachenov et al (3,704,806). Applicant's claims 109-112 fail to claim any useful proximity between the desiccant and the can or between the desiccant and the flexible means for enclosing.

The reference of Plachenov et al (col. 1, lines 16-20) discloses that silica gel is known as being a desiccant/dehumidifier.

It would have been obvious for any two known (or obvious) things to have existed at the same time, without a particular proximity.

Accordingly, in view of this it would have further been obvious for the device of Alband, enclosed/surrounded by the type of cover/sleeve of Marr, to have existed somewhere at the same time as a known silica gel desiccant which is disclosed by Plachenov et al.

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8. Claims 116 and 124 are finally rejected under 35 U.S.C. § 103 as being unpatentable over Alband in view of Marr as applied to claim 105 above, and further in view of official notice taken by the examiner that albuterol sulfate is known as a medication for use in metered dose inhalers.

Albuterol sulfate is a well known medication for metered dose devices such as used for the problems of asthma. The reference of Marr further suggests using metered dose devices/inhalers for treatment of the symptoms of asthma. Accordingly, it would have further been obvious in view of all of this to have made the metered dose device of Alband, as modified above by Marr (regarding surrounding with a cover), wherein the device includes an albuterol sulfate medication for the treatment of asthma symptoms.

9. Applicant's arguments with respect to claim 105 (and dependent claims) have been considered but are deemed to be moot in view of the new grounds of rejection necessitated by Applicant's amendment.

10. Applicant's amendment necessitated the new grounds of rejection. Accordingly, **THIS ACTION IS MADE FINAL**. See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

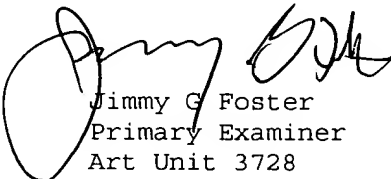
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A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (703) 308-1505. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (703) 308-2672. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

  
Jimmy G Foster  
Primary Examiner  
Art Unit 3728

JGF  
28 October 2003